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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,211	07/18/2003	Matthew Englehart	MWS-055RCE	4008
959 7590 10/18/2007 LAHIVE & COCKFIELD, LLP ONE POST OFFICE SQUARE BOSTON, MA 02109-2127			EXAMINER JACOB, MARY C	
			ART UNIT 2123	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/622,211	<b>Applicant(s)</b> ENGLEHART ET AL.	
	<b>Examiner</b> Mary C. Jacob	<b>Art Unit</b> 2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 4-18 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-18, 22-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The response filed on 7/25/07 has been received and considered. Claims 4-18, 22-32 are presented for examination.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/25/07 has been entered.

#### ***Claim Objections***

3. The objections to the claims 15-18 recited the Office Action, mailed 9/5/06, and not repeated below, are hereby withdrawn in light of the amendments to the claims, filed 7/25/07.
4. Claims 22-32 are objected to because of the following informalities. The claims are directed to a "device readable medium". It is unclear what the "device" is directed to. For example, is the "device" a "computer", such that the "medium" is a "computer readable medium"? Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 24 recites the limitation "the subsystems" in line 2. There is insufficient antecedent basis for this limitation in the claim. It appears that the claim should be dependent upon claim 23, not claim 22.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 4-18, 22-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims, as recited, appear to be directed to a recitation of abstract ideas (for example, generating code, grouping code, associating corresponding sets of code), and while they appear to recite a concrete, useful and tangible result, they are not limited to one practical application, that is, they appear to be directed to any and all applications of a "block diagram" or a "block diagram environment". Further, Claims 7-14, 25-32 are directed to grouping and

rearranging code, and do not appear to recite any physical transformation or any transformation of the data by the "electronic device". MPEP 2106 states:

*One may not patent a process that comprises every "substantial practical application" of an abstract idea, because such a patent "in practical effect would be a patent on the [abstract idea] itself." Benson, 409 U.S. at 71-72, 175 USPQ at 676; cf. Diehr, 450 U.S. at 187, 209 USPQ at 8 (stressing that the patent applicants in that case did "not seek to pre-empt the use of [an] equation," but instead sought only to "foreclose from others the use of that equation in conjunction with all of the other steps in their claimed process"). "To hold otherwise would allow a competent draftsman to evade the recognized limitations on the type of subject matter eligible for patent protection." Diehr, 450 U.S. at 192, 209 USPQ at 10. Thus, a claim that recites a computer that solely calculates a mathematical formula (see Benson) or a computer disk that solely stores a mathematical formula is not directed to the type of subject matter eligible for patent protection" .*

*The courts have also held that a claim may not preempt ideas, laws of nature or natural phenomena. The concern over preemption was expressed as early as 1852. See Le Roy v. Tatham, 55 U.S. 156, 175 (1852) ("A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right."); Funk Brothers Seed Co. v. Kalo Inoculant Co., 333 U.S. 127, 132, 76 USPQ 280, 282 (1948) (combination of six species of bacteria held to be nonstatutory subject matter).*

*Accordingly, one may not patent every "substantial practical application" of an idea, law of nature or natural phenomena because such a patent would "in practical effect be a patent on the [idea, law of nature or natural phenomena] itself." Gottschalk v. Benson, 409 U.S. 63, 71-72, 175 USPQ 673, 676 (1972).*

### ***Claim Rejections - 35 USC § 112***

10. The rejections of Claims 1-3, 19-21, 33-38 under 35 USC 112, second paragraph, are hereby withdrawn as they are directed to claims that have been cancelled by the response filed 7/25/07.

### ***Allowable Subject Matter***

11. Claims 4-18, 22-32 are allowed.
12. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary C. Jacob whose telephone number is 571-272-6249. The examiner can normally be reached on Tuesday-Thursday, 7AM-4PM.

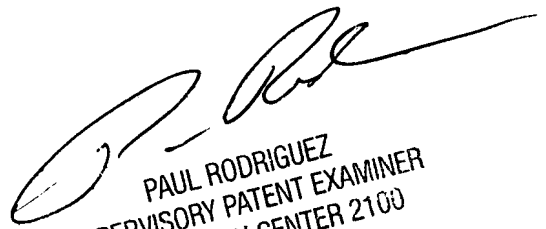
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2123

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary C. Jacob  
Examiner  
AU2123

MCJ  
10/9/07



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SUPERVISORY PATENT EXAMINER  
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